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CHANRAVATHANE S PONNUDURAI v. MAJLIS PEGUAM MALAYSIA

COURT OF APPEAL, PUTRAJAYA
SUPANG LIAN JCA
MOHD NAZLAN GHAZALI JCA
B AZIZUL AZMI ADNAN JCA
[CIVIL APPEAL NO: W-02(A)-741-05-2023]
13 MARCH 2025

C **Abstract** – *It is a clear legislative intent of the Legal Profession Act 1976 ('LPA') that an appeal to the High Court should only be made on a final order or decision of the Disciplinary Board ('DB'), that encapsulates both an order on liability and on punishment. A letter by the DB notifying the advocate and solicitor of the affirmation of liability and giving the said advocate and solicitor the opportunity to be heard is essentially a notification, which is more indicative in nature and is certainly not definitive, and could not therefore be construed as the final order or decision that is appealable under s. 103 of the LPA.*

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E ***LEGAL PROFESSION:*** *Disciplinary Proceedings – Disciplinary Board ('DB') – Complaint against advocate and solicitor – Affirmation of findings of liability by Disciplinary Committee – DB's letter notifying advocate and solicitor of affirmation of liability and giving opportunity to be heard – Advocate and solicitor filed originating summons to appeal against DB's letter – Whether premature and incompetent – Whether DB's letter final order or decision – Whether appealable under s. 103E of Legal Profession Act 1976*

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This was an appeal against the decision of the High Court dismissing the appellant's challenge against the finding of misconduct made by the Advocates and Solicitors Disciplinary Board under the Legal Profession Act 1976 ('LPA'). Complaints were made against the appellant, an advocate and
G solicitor, to the Disciplinary Board ('DB') set up under s. 93 of the LPA. Both these complaints were subsequently withdrawn. Notwithstanding the withdrawals, the Bar Council ('respondent') decided to intervene and pursue the complaints against the appellant, which led to the DB directing the Disciplinary Committee ('DC') to proceed with the investigation into the
H complaints. On the conclusion of the investigations, the DC recommended to the DB that the appellant ought to be reprimanded and issued with a fine in the sum appropriate with the severity of the appellant's misconduct under s. 103C(1)(c)(i) of the LPA, which was RM5,000. The DB affirmed the finding of liability but rejected the recommendation on punishment for the
I fine of RM5,000 as stated in a letter from the DB dated 13 October 2022 to the appellant. In that same letter of 13 October 2022, the DB also notified

the appellant that before the DB would proceed to make an order that would likely be adverse against the appellant, she was invited to attend the proceedings in order to afford her with a reasonable opportunity to be heard in accordance with s. 103D(2) and 103D(4) of the LPA. The appellant attended the proceedings before the DB. Subsequently, the appellant filed an originating summons ('OS') at the High Court to appeal against the DB's letter dated 13 October 2022 pursuant to s. 103E of the LPA, by seeking an order that the decision of the DB on the finding of liability be set aside. In the meantime, on 7 January 2023, the DB issued an order which affirmed the DC's finding of liability and ordered pursuant to s. 103D(1) of the LPA that the appellant pay a fine of RM20,000 and that she be suspended from practice for three months. The respondent raised a preliminary objection against the OS, submitting that the OS filed by the appellant to appeal against the DB's letter dated 13 October 2022 under s. 103E of the LPA was both premature and incompetent because the DB letter dated 13 October 2022 was not a final order or decision that was appealable under the said s. 103E. The High Court allowed the respondent's preliminary objection and dismissed the OS. Dissatisfied, the appellant appealed.

Held (dismissing appeal)
Per Mohd Nazlan Ghazali JCA delivering the judgment of the court:

(1) Fundamentally, the right of appeal provisions as found under s. 103E of the LPA state that any party aggrieved by any final order or decision made by the DB under s. 103D of the LPA shall have the right to appeal to the High Court within one month of receiving notification of that order or decision. On examination of the record of appeal and consideration of the submission of parties, the DB letter dated 13 October 2022 was not a final order or decision. Neither did the DB make a final decision on liability on 9 September 2022 which was appealable under s. 103. (paras 29 & 34)

(2) The essence of the DB letter dated 13 October 2022 was unmistakably more of a notification to the appellant to attend the hearing on 12 November 2022 because the DB was thinking of meting out a greater punishment than that recommended by the DC. In contrast, the DB order of 7 January 2023 was plainly an order issued by the DB. The DB letter dated 13 October 2022 was in fact only a letter, and it was signed by the Director of Complaints Secretariat who, under s. 98 of the LPA, served as a secretary to the DB and who was primarily only responsible for the daily administration of complaints against advocates and solicitors. The legal status of the DB order of 7 January 2023 was undoubtedly different, as it was an order, and it was issued by the Chairman of the DB. (paras 39 & 40)

(3) The DB letter dated 13 October 2022 did say that the DB 'affirmed the finding of liability' by the DC. However, the DB letter dated 13 October 2022 did go on to say that it rejected the recommendation concerning the fine. Even more clearly, by virtue of the words, 'However, before the Board makes an order that is likely to be adverse against you ...' the DB letter dated 13 October 2022 indisputably stated that it had not yet made any order (in accordance with s. 103D(4) of the LPA) before giving the opportunity to the appellant to be heard, which was precisely what the DB letter dated 13 October 2022 sought to do – to invite the appellant to first appear before the DB. The DB letter dated 13 October 2022 was therefore essentially a notification to the appellant, and which was more indicative in nature. It was certainly not definitive. (paras 41 & 42)

(4) The DB letter dated 13 October 2022 could not therefore be construed as the final order or decision of the DB made under s. 103D for it was the DB order of 7 January 2023 which, in fact and law, encapsulated both an order on liability and on punishment, which final order was issued on 7 January 2023. The DB Order of 7 January 2023 was therefore the final order or decision made under s. 103D referred to in s. 103E as being capable of being appealed against. As such, it was on this date of 7 January 2023 that the appellant's right to appeal under s. 103E of the LPA accrued. For these reasons too, the argument of the appellant that the finding of liability had been made earlier by the DB on 9 September 2022 as stated in the DB letter dated 13 October 2022, and that this was a final decision under s. 103D which could be appealed under s. 103E, could not be sustained. (paras 44 & 46)

(5) A 'final order or decision' under s. 103D of the LPA referred to in s. 103E must be an 'order' or 'decision' that comprises an order both on liability and punishment. Even if the finding on liability had been made earlier by the DB on 9 September 2022, it was not a final decision, but which only became final, within the meaning envisaged in ss. 103D and 103E, when the decision was expressed as such in the DB order of 7 January 2023 which comprised the order or decision on both liability and punishment. In other words, it was the DB order of 7 January 2023, which encapsulated both an order on liability and on punishment, which was the 'decision' or 'order' appealable under s. 103E of the LPA. (paras 47 & 48)

(6) It is a clear legislative intent of the LPA that an appeal to the High Court should only be made on a final order or decision of the DB, which is after its process on punishment has been concluded. The appellant could still appeal against the final order as contained in the DB order of 7 January 2023. The appellant had in fact filed a separate appeal against the same. It was as such difficult to see in what fashion any prejudice

would be occasioned to the appellant by the dismissal of the High Court OS or the refusal of the instant appeal. The decision of the court in *Ong Keh Keong v. Lembaga Tatatertib Peguam-Peguam* therefore stood as a clear authority that an appeal under s. 103E of the LPA should only be lodged after the final order on both liability and punishment had been made by the DB. (paras 59 & 67)

Case(s) referred to:
Ong Keh Keong v. Lembaga Tatatertib Peguam-peguam [2020] 10 CLJ 181 CA ***(refd)***

Legislation referred to:
Legal Profession Act 1976, ss. 93, 94(3)(c), (o), 98, 99(1), (3), 100(1), (3)(b), 103A(2), 103B, 103C(1)(c)(i), 103D(1), (2), (4), 103E(1), (2)

For the appellant - Amarjeet Singh, Avtar Singh & Chanravathane S Ponnudurai; M/s SP Chanra
For the respondent - Jack Yow Pit & Ong Eng Hong; M/s Rahmat Lim & Partners

[Editor's note: Appeal from High Court, Kuala Lumpur; Saman Pemula No: WA-17D-38-11-2022 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Nazlan Ghazali JCA:

Introduction

[1] This was an appeal against the decision of the High Court dismissing the appellant's challenge against the finding of misconduct made by the Advocates & Solicitors Disciplinary Board under the Legal Profession Act 1976 ("the LPA 1976").

[2] Whilst the merits of the challenge have yet to be heard and the dismissal was by the High Court upholding a preliminary objection raised by the respondent, this appeal examined the true remit of s. 103E of the LPA 1976 in a situation where the challenge was made on a finding of liability made by the Disciplinary Board despite the decision on the punishment was still pending.

[3] Having heard the appeal, examined the appeal record and considered the submissions by parties, we unanimously decided to dismiss the appeal for the reasons set out herein under.

Key Background Facts

[4] The appellant is an advocate and solicitor. A complaint was made against her to the Disciplinary Board set up under s. 93 of the LPA 1976. A second complaint was later lodged to the Disciplinary Board against the appellant by the employer of the first-mentioned complainant.

[5] However, both these complaints were subsequently withdrawn.

[6] Notwithstanding the withdrawals, the Bar Council – the respondent herein, decided to intervene in and pursue the complaints against the appellant. This led to the Disciplinary Board directing the Disciplinary Committee to proceed with the investigation into the complaints.

[7] On the conclusion of the investigations, the Disciplinary Committee in its report dated 8 February 2021 recommended to the Disciplinary Board that the appellant ought to be reprimanded and issued with a fine in the sum appropriate with the severity of the appellant's misconduct under s. 103C(1)(c)(i) of the LPA 1976. This was subsequently stated to be the sum of RM5,000.

[8] On 9 September 2022, the Disciplinary Board affirmed the finding of liability but rejected the recommendation on punishment for the fine of RM5,000, as stated in a letter from the Disciplinary Board dated 13 October 2022 to the appellant, which was received by the latter on 14 October 2022. In that same letter of 13 October 2022, the Disciplinary Board also notified the appellant that before the Disciplinary Board would proceed to make an order that would likely be adverse against the appellant, she was invited to attend the proceedings in order to afford her with a reasonable opportunity to be heard in accordance with s. 103D(2) and 103D(4) of the LPA 1976.

[9] The appellant as well as her counsel did as a result on 12 November 2022 attend the proceedings before the Disciplinary Board.

[10] Not long after, on 14 November 2022, the appellant filed an Originating Summons ("the OS") at the High Court to appeal against the Disciplinary Board's letter dated 13 October 2022 pursuant to s. 103E of the LPA 1976, by seeking an order that the decision of the Disciplinary Board on the finding of liability be set aside.

[11] In the meantime, on 7 January 2023, the Disciplinary Board issued an order dated 7 January 2023 which affirmed the Disciplinary Committee's finding of liability and ordered pursuant to s. 103D(1) of the LPA 1976 that the appellant pay a fine of RM20,000 and that she be suspended from practice for three months.

[12] The High Court on 3 April 2023 decided to allow respondent's preliminary objection against the OS and therefore dismissed the same.

[13] Dissatisfied, the appellant on 2 May 2023 filed an appeal against the dismissal. Hence, the appeal now before us.

The Verdict Of The High Court

[14] The mainstay of the case of the respondent, as accepted by the High Court, was that the OS filed by the appellant to appeal against the Disciplinary Board's letter dated 13 October 2022 ("the DB letter of 13 October 2022") under s. 103E of the LPA 1976 was both premature and incompetent because the DB letter dated 13 October 2022 was not a final order or decision that was appealable under the said s. 103E.

Relevant Provisions Of The LPA 1976

[15] The framework that deals with complaints made against an advocate and solicitor under the LPA 1976, which provisions are housed thereunder in Part VII on Disciplinary Proceedings, may for present purposes, be summarised in the following manner.

[16] A complaint may first be made under s. 99(1) to the Disciplinary Board in respect of any misconduct envisaged in s. 94(3) against an advocate and solicitor. Pursuant to s. 99(3), the Bar Council or a State Bar Committee is not precluded from making any complaint of its own motion to the Disciplinary Board against the advocate and solicitor.

[17] Should the Disciplinary Board be satisfied that there is merit in the complaint, it shall under s. 100(1) ask for a written explanation from the advocate and solicitor concerned, and if, following its review of the written explanation, the Disciplinary Board is of the view that there is merit in the complaint, it shall proceed under s. 100(3)(b) to appoint a Disciplinary Committee, which establishment and composition are governed under s. 103A(2), whilst its inquiry proceedings are set out under s. 103B.

[18] In accordance with s. 103C(1), upon the conclusion of the inquiry, the Disciplinary Committee shall record its findings in relation to the facts of the case, and if the determination of the Disciplinary Committee is that a cause for disciplinary action exists and is of sufficient gravity to warrant the advocate and solicitor to be subject to any one or more of the punishments stated therein, the Disciplinary Committee shall recommend that the advocate and solicitor be subjected to any one or more of the stated punishments.

[19] These are first, a reprimand or censure, secondly, the imposition of a fine not exceeding fifty thousand ringgit, thirdly, a suspension or fourthly, the striking off the Roll.

[20] In the case before us, the Disciplinary Committee, in its report dated 8 February 2021, made the recommendation that the appellant should be reprimanded and be imposed with a fine in the sum appropriate with the severity of her misconduct which was adjudged to be the sum of RM5,000.

[21] Having received the recommendations of the Disciplinary Committee, the Disciplinary Board is subject to the provisions of s. 103D of the LPA 1976, which read as follows:

> Consideration by the Disciplinary Board of the report of the Disciplinary Committee
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> 103D. (1) After consideration of the report of the Disciplinary Committee, the Disciplinary Board may make an order affirming or rejecting the finding or recommendation of the Disciplinary Committee and if the Disciplinary Board rejects the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall record the reason for the rejection.
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> (2) The Disciplinary Board may in appropriate cases impose a greater or lesser penalty or punishment than that recommended by the Disciplinary Committee.
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> (3) Where the Disciplinary Board does not agree with the finding or recommendation of the Disciplinary Committee, the Disciplinary Board shall make such other order as it deems just.
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> (4) Before the Disciplinary Board makes an order that is likely to be adverse against an advocate and solicitor under subsection (2) or (3), it shall notify the advocate and solicitor of its intention to do so and give him a reasonable opportunity to be heard.
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> (5) Where the Disciplinary Board makes an order that the advocate and solicitor should make restitution to the complainant, it may stipulate the time within which such restitution ought to be made.
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> (6) A sum ordered by the Disciplinary Board under subsection (5) to be restituted may be recoverable by the complainant as a civil debt.

[22] As such, based on the above provisions, the Disciplinary Board, after considering the report of the Disciplinary Committee, may either affirm or reject the findings or recommendations of the Disciplinary Committee. As stated in s. 103D(2), the Disciplinary Board may in appropriate cases impose a greater or lesser penalty or punishment than that recommended by the Disciplinary Committee.

[23] In the case now before us, this provision was invoked by the Disciplinary Board when, on 9 September 2022, although it affirmed the finding of liability by the Disciplinary Committee against the appellant, it rejected the recommendation of the punishment in respect of the fine of RM5,000 to be imposed on the appellant. It felt that the said fine was inadequate on the facts of the complaint.

[24] Thus, in the DB letter of 13 October 2022, the Disciplinary Board informed the appellant that the Disciplinary Board had at its meeting held on 9 September 2022 considered the report of the Disciplinary Committee on the complaints against the appellant and further stated that it had:

> affirmed the finding of liability by the DC but rejected the recommendation on punishment for fine of RM5,000.00.

[25] The DB letter of 13 October 2022 further stated that:

> However, before the Board makes an order that is likely to be adverse against you, you are hereby given a reasonably opportunity to be heard in accordance with Section 103D(2) and 103D(4) of the Act.

[26] The appellant's response was to file an appeal against what she construed to be a decision of the Disciplinary Board as set out in the DB letter of 13 October 2022. As mentioned, this was filed at the High Court under the Rules of the Court 2012 on 14 November 2022 by way of the OS, where she sought for an order that the decision of the Disciplinary Board on the finding of liability as mentioned in the DB letter of 13 October 2022 be set aside. This appeal was undertaken pursuant to s. 103E(1) which confers a right of appeal to any party aggrieved by any final order or decision made by the Disciplinary Board under s. 103D within one month of the receipt of the notification of that order or decision.

[27] The appellant contended that she received the notification in the DB letter of 13 October 2022 the day after on 14 October 2022. As stated earlier, on 3 April 2023, the High Court allowed the respondent's preliminary objection against the OS and dismissed the same. Dissatisfied, the appellant on 2 May 2023 filed an appeal before us against the dismissal.

Analysis & Findings Of This Court

[28] Now, it is apposite that the provisions of s. 103E be stated, as follows:

> Appeal from the final order or decision of the Disciplinary Board
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> 103E. (1) Any party aggrieved by any final order or decision made by the Disciplinary Board:
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> (a) pursuant to subsection 94(4);
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> (b) under paragraph 100(1)(a), (3)(a) or subsection 100(7), (8) or (15); or
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> (c) under section 103D,
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> shall have the right to appeal to the High Court within one month of the receipt of the notification of that order or decision.
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> ...
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> (4) The appeal shall be by way of an originating motion setting out the ground of appeal supported by affidavit.

A (5) Any appeal against the decision of the High Court shall lie to the Court of Appeal and thereafter to the Federal Court.

(6) The Bar Council may in its discretion intervene at any stage of any appeal under this section.

B (7) The Disciplinary Board shall not be cited as a party in any appeal under this section.

...

[29] Fundamentally, the right of appeal provisions as found under s. 103E of the LPA 1976 state that any party aggrieved by any final order or decision C made by the Disciplinary Board under s. 103D of the LPA 1976 shall have the right to appeal to High Court within one month of receiving notification of that order or decision. The key thrust of the objection of the respondent was that the purported appeal in the form of the OS to the High Court was both premature and incompetent because the DB letter dated 13 October 2022 was not a final order or decision that was appealable under the s. 103E. D

[30] The appellant, however, maintained a different stance.

[31] The appellant argued that the Disciplinary Board did in fact and law exercise its power under s. 103D of the LPA 1976 when on 9 September 2022 it considered the report of the Disciplinary Committee, being the date E referred to in the DB letter dated 13 October 2022. On that 9 September 2022, the Disciplinary Board made a decision affirming the finding of the liability against the appellant, as clearly stated in the the DB letter dated 13 October 2022, as referred to in the extract above. Therefore, there was already finality of the decision on liability against the appellant.

F **[32]** Furthermore, without the final decision that was so made on liability, the Disciplinary Board did not have the power to proceed from s. 103D(1) to s. 103D(2) and (4) of the LPA 1976 to deal with the consequential provisions of the punishment, also as stated in the DB letter dated 13 October 2022. The power to invoke s. 103D(2) and (4) of the LPA 1976 could not G have been made by the Disciplinary Board without or before it making a final decision on liability.

[33] At first blush, this contention of the appellant that the Disciplinary Board had already made a "final" decision on liability on 9 September 2022 and is therefore appealable under s. 103E of the LPA 1976 seems attractive. H

[34] However, on further examination of the record of appeal and consideration of the submissions of parties, we agree that the DB letter dated 13 October 2022 was not a final order or decision. Neither did the Disciplinary Board make a final decision on liability on 9 September 2022 I which is appealable under s. 103E.

[35] We say so for a number of reasons.

[36] Now, other than the DB letter dated 13 October 2022, we must stress that there was also that another critical document, which was the order issued by the Disciplinary Board dated 7 January 2023. This followed the DB letter dated 13 October 2022, which had resulted in the appellant and her counsel appearing before the Disciplinary Board pursuant to s. 103D(2) and 103D(4) prior to the Disciplinary Board making its determination on the punishment for the misconduct, whereby the Disciplinary Committee's recommended punishment of the fine of the sum of RM5,000 was deemed by the Disciplinary Board as inadequate.

[37] It was only then on 7 January 2023 that the Disciplinary Board issued an order of even date which affirmed the Disciplinary Committee's finding of liability and ordered pursuant to s. 103D(1) of the LPA 1976 that the appellant pay a fine of RM20,000 and that she be suspended from practice for three months ("the DB order of 7 January 2023").

[38] When the two documents – the DB letter dated 13 October 2022 and the DB order of 7 January 2023 – are closely examined, a number of important distinguishing features stand out.

[39] The essence of the DB letter dated 13 October 2022 was unmistakably more of a notification to the appellant to attend the hearing on 12 November 2022 because the Disciplinary Board was thinking of meting out a greater punishment than that recommended by the Disciplinary Committee. In contrast, the DB order of 7 January 2023 is plainly an order issued by the Disciplinary Board.

[40] In the first place too, the DB letter dated 13 October 2022 was in fact only a letter, and it was signed off by the director of complaints secretariat who under s. 98 of the LPA 1976 serves as the secretary to the Disciplinary Board and who is primarily only responsible for the daily administration of complaints against advocates and solicitors. The legal status of the DB order of 7 January 2023 is undoubtedly different, as it is an order, and it was issued by the chairman of the Disciplinary Board.

[41] No less significantly, it is true that the DB letter dated 13 October 2022 did say, as we mentioned earlier, that the Disciplinary Board "affirmed the finding of liability" by the Disciplinary Committee. But the DB letter dated 13 October 2022 did go on to say that it rejected the recommendation concerning the fine. Even more clearly, by virtue of the words, as mentioned above, "However, before the board makes an order that is likely to be adverse against you ..." the DB letter dated 13 October 2022 indisputably stated that it had not yet made any order (in accordance with s. 103D(4) of the LPA 1976) before giving the opportunity to the appellant to be heard, which was precisely what the DB letter dated 13 October 2022 sought to do – to invite the appellant to first appear before the Disciplinary Board.

[42] The DB letter dated 13 October 2022 was therefore essentially a notification to the appellant, and which was more indicative in nature. It was certainly not definitive.

[43] It is demonstrably clear, on the other hand, that the DB Order of 7 January 2023 is an order of the Disciplinary Board. These self-explanatory statements, as contained in the same, could not have been more unequivocal:

> the Disciplinary Board having on 7 January 2023, considered the report made by the Disciplinary Committee, the written submission of the Respondent and the further complete written submission, both dated 3 January 2023 *and only after that made the following orde*r:
>
> > *affirmed the Disciplinary Committee's finding of liability* but rejected the recommendation on punishment for a fine of Ringgit Malaysia Five Thousand (RM5,000), and upon hearing her counsel, Mr Amarjeet Singh s/o Mehar Singh pursuant to Section 103D(2) and Section 103D(4) of the Act, instead *IT IS ORDERED pursuant to Section 103D(1) of the Act that the Respondent do pay a fine of … RM20,000 …*
>
> *AND FURTHER ORDERED that the Respondent be suspended from practice as an Advocate and Solicitor of the High Court of Malaya for a period of three (3) months … .*
>
> (emphasis added)

[44] The DB letter dated 13 October 2022 cannot therefore be construed as the final order or decision of the Disciplinary Board made under s. 103D for it was the DB order of 7 January 2023 which in fact and law encapsulates both an order on liability and on punishment, which final order was issued on 7 January 2023. The DB order of 7 January 2023 is therefore the final order or decision made under s. 103D referred to in s. 103E as being capable of being appealed against.

[45] As such, we agree that, as the respondent correctly submitted, it was on this date of 7 January 2023 that the appellant's right to appeal under s. 103E of the LPA 1976 accrued.

[46] For these reasons too, the argument of the appellant that the finding of liability had been made earlier by the Disciplinary Board on 9 September 2022 as stated in the DB letter dated 13 October 2022, and that this was a final decision under s. 103D which could be appealed under s. 103E, cannot be sustained.

[47] We are of the view that a "final order or decision" under s. 103D of the LPA 1976 referred to in s. 103E must be an "order" or "decision" that comprises an order both on liability and punishment. We venture to add that even if the finding on liability had been made earlier by the Disciplinary Board on 9 September 2022, it was not a final decision, but which only

became final, within the meaning envisaged in s. 103D and s. 103E, when the decision was expressed as such in the DB order of 7 January 2023 which comprised the order or decision on both liability and punishment.

[48] In other words, we reiterate that it is the DB order of 7 January 2023, which encapsulates both an order on liability and on punishment, which is the "decision" or "order" appealable under s. 103E of the LPA 1976.

[49] The position that the final order or decision under s. 103D must refer to both liability and punishment is also the conclusion arrived at by this court in the case of *Ong Keh Keong v. Lembaga Tatatertib Peguam-peguam* [2020] 10 CLJ 181.

[50] In that case, the Disciplinary Committee, upon finding the appellant advocate and solicitor guilty of dishonest and fraudulent conduct in breach of s. 94(3)(c) of the LPA 1976 and guilty of conduct which was unbefitting of an advocate and solicitor under s. 94(3)(o), recommended that the advocate and solicitor be suspended from practice for one month and be imposed with a fine of RM5,000. Not unlike the present appeal before us, the Disciplinary Board affirmed the Disciplinary Committee's finding on liability but disagreed with the recommended punishment.

[51] The Disciplinary Board then issued a notice to the advocate and solicitor to appear pursuant to s. 103D(2) and (4) of the LPA 1976 with a view to enhancing the punishment. The advocate and solicitor's judicial review application against that decision of the Disciplinary Board was struck out by the High Court on account that that decision was not amenable to judicial review and the application being premature and amounted to an attempt to short-circuit the statutory disciplinary and appellate process provided in the LPA 1976.

[52] It is very clear that this court in *Ong Keh Keong* (*supra*) decided that the decision of the Disciplinary Board to affirm the Disciplinary Committee's finding on liability but to reject the punishment recommended by the Disciplinary Committee was not a final order or decision under s. 103D of the LPA 1976. This is stated in no uncertain terms by the court as follows:

> [59] We do not think that the Disciplinary Board's action on 14 November 2010, informing the applicant, can be properly characterised as a "decision" within the meaning of s. 103D of the LPA 1976. What was involved was not a decision which was final. A decision to affirm the finding on liability but disagreeing with the punishment recommended by the Disciplinary Committee to be imposed on the application in our view is not a "decision". Furthermore, it must be emphasised that the Disciplinary Committee's decision is not binding on the Disciplinary Board.

[53] That a final order or decision under s. 103D of the LPA 1976 is the one that matters is also made amply plain in the following passage from the same judgment:

> [68] In this present case, the applicant has a right of appeal to the High Court pursuant to s. 103E of the LPA 1976 in respect of any decision made by the respondent in affecting the applicant. *Thus, the applicant's remedy, if he is dissatisfied with the decision of the respondent dated 13 October 2016, is to wait for the respondent to make an order under s. 103D of the LPA 1976 after hearing the applicant on the issue of enhancement of punishment and then to file an appeal to the High Court pursuant to s. 103E of the LPA 1976.* In this circumstance, the applicant's application for judicial review is premature and amounts to an attempt to short-circuit the statutory disciplinary and appellate process provided in the LPA 1976.
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> (emphasis added)

[54] As shown above, the Court of Appeal in *Ong Keh Keong* stated that the advocate had a right to appeal against the order of the Disciplinary Board pursuant to the previous version of s. 103E of the LPA 1976 such that he ought to await the outcome of the final order on both liability and punishment under s. 103D(1) of the LPA 1976 before filing an appeal.

[55] And in that same judgment of this court, it was held that the filing of a judicial review against the letter issued by the Disciplinary Board under s. 103D(2) and (4) of the LPA 1976 affirming the finding of liability of the Disciplinary Committee but disagreeing with the latter's recommended punishment was therefore premature.

[56] Moreover, it is our view that separating a decision on liability (which is claimed to be final) from a decision on both liability and punishment causes inefficiencies in the civil justice system. When the Disciplinary Board had occasions to disagree with the Disciplinary Committee's recommendations, such as the case presently, and in *Ong Keh Keong* (*supra*), separate appeals to the High Court may ensue, resulting in unnecessary judicial time and resources being expended and wasted. This also unwittingly encourages the reprehensible conduct of pursuing litigation by instalment.

[57] As a matter of fact, the appellant in this case before us had also separately already lodged another appeal to the High Court, which was against the final order as contained in the DB order of 7 January 2023. She ought to have filed only that single appeal against the DB order of 7 January 2023 under s. 103E. Not two appeals as done here. Or that the appeal against the finding on punishment could also be asked to be consolidated or heard together with the appeal against the finding of liability and punishment.

[58] Indeed, in the High Court, these two appeals – one on liability, and the other on both liability and punishment – were fixed before two different High Court Judges, with the potentiality of inconsistent or conflicting judgments arising therefrom not impossible, which could be confounded further should these decisions be further escalated to the appellate courts.

Not to mention the delays that could result should stay of execution or proceedings be granted pending appeal at the relevant stages. Certainly not a desired state of affairs in our administration of justice.

[59] Additionally, it is a clear legislative intent of the LPA 1976 that an appeal to the High Court should only be made on a final order or decision of the Disciplinary Board, which is after its process on punishment has been concluded. This was even stated by the Court of Appeal in *Ong Keh Keong* (*supra*), in the following terms:

> [52] *Pursuant to s. 103D(4) of the LPA 1976, it was Parliament's intention that an advocate and solicitor be given the right to make a representation before the Disciplinary Board. Such representation should have been taken into account before the procedure for punishment is finalised, and it is only at the end of this process that the Disciplinary Board must make a decision with respect to the nature of the punishment to be imposed.*
>
> [53] It is our considered opinion that an advocate and solicitor, who is dissatisfied with any decision of the Disciplinary Board should in the first instance make representation after receiving notice under s. 103D(4) from the Disciplinary Board. Therefore, the applicant should avail himself of the right to make representations under s. 103D(4) before commencing judicial review proceeding against the respondent.
>
> [54] Protections for the applicant are provided under s. 103D(4) of the LPA 1976. It must be emphasised that at that stage, the applicant was not in a position to allege that his right has been infringed until the Disciplinary Board make a decision under s. 94 of the LPA 1976.
>
> [55] *Pursuant to s. 103D(4) where a notice is issued to an advocate and solicitor, the Disciplinary Board must carry out a review of the nature of the punishment to be imposed on the advocate and solicitor. If the punishment imposed does not lead to an outcome satisfactory to an advocate and solicitor, then he may appeal to the High Court against the said finding of liability and the punishment.*
>
> (emphasis added)

[60] This is also consistent with the legislative amendment to s. 103E of the LPA 1976 in 2012 which introduced the word "final" which did not appear in the former s. 103E(1) which read as follows:

> Any party aggrieved by **any decision or order** made by the Disciplinary Board made under subsection 100(5), (8) or (9) or Section 103D shall have the right to appeal to the High Court ...
>
> (emphasis added)

[61] Unmistakably, by virtue of the amended s. 103E of the LPA 1976 which presently reads "final order or decision" the legislature had designed that an appeal under the said s. 103E of the LPA 1976 can only be brought against a final decision or order of the Disciplinary Board. Paragraph 17 of the explanatory statement of the Legal Profession (Amendment) Bill 2012 to amend the LPA 1976 states as follows:

> Clause 17 seeks to amend s. 103E of Act 166 relating to appeals. **Right to appeal, which is still restricted to final orders or decisions of the Disciplinary Board**, is proposed to be extended to any order made under subsection 94(4).
>
> (emphasis added)

[62] We are mindful that this amendment was concerned with challenge against the decision of the Disciplinary Board, with the key objective of the amendment being to provide clarity that only final decisions can be made subject to judicial review application. Thus, it is also stated in para. 18 of the said explanatory statement that:

> ... the preservation of the fundamental right to judicial review through the deletion of subsection 103E(2) in clause 17 needs to be balanced against the interest of the complainant and the public at large. There is deep concern that the process of judicial review may be abused, purely to delay the inquiry or to stop the inquiry from commencing at all.

[63] We are equally mindful that the appellant sought to distinguish the present case from *Ong Keh Keong* (*supra*) because the latter concerns a judicial review application, which did not feature in the present case. We do not think however that this distinction is of any significance as any challenge either in the form of an appeal under s. 103E or by way of a judicial review ought rightfully only to be made against a final decision of the Disciplinary Board. It is noteworthy that para. 18 of the explanatory statement also clearly provides as follows:

> 18. ... An aggrieved party shall have access to judicial review over any objection raised only when the Disciplinary Board made it final order or decision over a complaint.

[64] The said abuse of the judicial review process as mentioned in para. 18 of the explanatory statement could happen if any judicial review proceedings were commenced against a non-decision such as a decision which was not final causing a delay in the proceedings undertaken by the relevant administrative tribunal or body. The same abuse could occur if the appellant here was allowed to appeal against the DB letter of 13 October 2022 even before the Disciplinary Board had the opportunity to make a final order in respect of not only liability but also punishment.

[65] In other words, as the legislature had in the Legal Profession (Amendment) Act 2012 amended the LPA 1976 by incorporating the word "final" – precisely to prevent litigants from utilising the judicial review proceedings to delay the proceedings of the Disciplinary Board, it cannot be that the same proceedings could be delayed by the filing of appeals purportedly under s. 103E of the LPA 1976 before a final order on liability and punishment is made.

[66] Furthermore, as stated earlier, and at the risk of further repetition, the appellant could still appeal against the final order as contained in the DB order of 7 January 2023. We reiterate that in fact the appellant had filed a separate appeal against the same – on 16 January 2023 under Originating Summons No. WA-17D-2-01/2023. It is as such difficult to see in what fashion any prejudice would be occasioned to the appellant by the dismissal of the High Court OS or the refusal of the instant appeal.

[67] This decision of this court in *Ong Keh Keong* therefore stands as a clear authority that an appeal under s. 103E of the LPA 1976 should only be lodged after the final order on both liability and punishment has been made by the Disciplinary Board. The focus of the judgment in *Ong Keh Keong*, as could be readily seen in the passages referred to above was on the very nature and character of the letter issued by the Disciplinary Board under s. 103D(2) and s. 103D(4) of the LPA 1976.

[68] It is also noteworthy that under the LPA 1976, prior to the 2012 amendment, judicial review process was never allowed, but the appeal process had always been there. The version of s. 103E(2) of the LPA 1976 prior to the said amendment was as follows:

> Appeal from the decision of the Disciplinary Board
>
> ...
>
> (2) There shall be no judicial review against any decision or order made by the Disciplinary Board.

[69] In addition, nothing turns on the fact that in *Ong Keh Keong*, the advocate had issued a letter of objections and the objections were fixed for hearing by the Disciplinary Board but that before the objections could be heard, the appellant had filed the judicial review application. We noted that no such objection letter was given by the appellant herein, but that in our view such an objection, had it been made, would have been immaterial and could not have in any event converted or changed the nature of any order of the Disciplinary Board.

Conclusion

[70] In view of the foregoing analysis and reasons, we find that the High Court did not err in its dismissal of the OS, the decision which we hereby affirm, as a result of which this appeal is dismissed, with no order as to cost.